

STATE OF MICHIGAN
COURT OF APPEALS

MARIO D. BURNS and LAWRENCE E. HEINS,

Plaintiffs-Appellees,

v

DETROIT NEWS, INC.,

Defendant-Appellant.

UNPUBLISHED

December 21, 2001

No. 226274

Wayne Circuit Court

LC No. 98-840528-NZ

Before: Meter, P.J., and Jansen and Gotham*, JJ.

PER CURIAM.

Defendant Detroit News appeals by delayed leave granted from a circuit court order denying its motion for summary disposition pursuant to MCR 2.116(C)(10). We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

James Dyer, a Detroit News reporter, wrote an article about a criminal narcotics case that was dismissed because the officers who were scheduled to appear for court were actually attending a golf outing. The article identified plaintiffs as the officers in question and included statements from Raymond Walsh, an assistant prosecutor, who had learned about the dismissal after the fact and was upset about it, and from Ron Hnilica, plaintiffs' supervisor, who said plaintiffs had tried to have the court date adjourned but due to some miscommunication, that did not happen.

Plaintiffs sued for defamation. The News moved to dismiss, asserting that the evidence failed to establish that it published the article with actual malice. The trial court ruled that there was sufficient evidence of malice and denied the motion.

The trial court's ruling on a motion for summary disposition is reviewed de novo on appeal. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). A motion brought under MCR 2.116(C)(10) tests the factual support for a claim. In ruling on such a motion, the trial court must consider not only the pleadings, but also depositions, affidavits, admissions, and other documentary evidence, MCR 2.116(G)(5), and must give the benefit of any reasonable doubt to the nonmoving party. *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999). Summary disposition is appropriate only if the opposing party fails to present documentary evidence establishing the existence of a material factual dispute. *Id.* at 455.

* Circuit judge, sitting on the Court of Appeals by assignment.

The elements of a defamation claim are (1) a false and defamatory statement concerning the plaintiff, (2) an unprivileged publication to a third party, (3) fault amounting at least to negligence on the part of the publisher, and (4) either actionability of the statement irrespective of special harm (defamation per se) or the existence of special harm caused by the publication (defamation per quod). *Ireland v Edwards*, 230 Mich App 607, 614; 584 NW2d 632 (1998). Because plaintiffs are public figures, defendant may be held liable only if plaintiffs are able to prove by clear and convincing evidence that defendant published the defamatory statements with actual malice. *Collins v Detroit Free Press, Inc*, 245 Mich App 27, 32; 627 NW2d 5 (2001).

Actual malice is defined as knowledge that the published statement was false or as reckless disregard as to whether the statement was false or not. Reckless disregard for the truth is not established merely by showing that the statements were made with preconceived objectives or insufficient investigation. Furthermore, ill will, spite, or even hatred, standing alone, do not amount to actual malice. “Reckless disregard” is not measured by whether a reasonably prudent man would have published or would have investigated before publishing, but by whether the publisher in fact entertained serious doubts concerning the truth of the statements published. [*Grebner v Runyon*, 132 Mich App 327, 332-333; 347 NW2d 741 (1984) (citations omitted).]

“When addressing a defamation claim, a reviewing court is required to make an independent examination of the record to ensure against forbidden intrusions into the field of free expression.” *Kefgen, supra* at 617. Whether the evidence in a defamation action is sufficient to support a finding of actual malice is a question of law that is reviewed de novo on appeal. *Faxon v Michigan Republican State Central Committee*, 244 Mich App 468, 473; 624 NW2d 509 (2001).

The evidence presented to the trial court showed that Dyer got a tip about a case being dismissed because the officers who were to appear at the preliminary examination were out golfing. It is not disputed that plaintiffs were out golfing the day of the preliminary examination. Dyer said that Walsh confirmed that plaintiffs were the officers who had failed to appear, although Walsh disputed that assertion. Dyer contacted Hnilica, who told him that plaintiffs were involved in the criminal case and that they had been golfing the day of the preliminary examination. Both Hnilica and plaintiff Heins told Dyer that plaintiffs had tried to get the preliminary examination adjourned and apparently believed it would be done, but it was not adjourned due to a miscommunication. Hnilica said “that is why the case came up and was ultimately dismissed.” Thus, according to Dyer, the information provided in the tip had been confirmed by Walsh, Hnilica, and, to a lesser extent, Heins.

Plaintiffs argued below that the statements were false because it was another officer’s failure to appear at the preliminary examination that caused the criminal case to be dismissed, and Burns and Heins both testified that they were not required to appear at the hearing. However, plaintiffs did not claim or present any evidence to show that Dyer had any information about the other officer’s involvement, and they failed to present any evidence to support their assertion that they were not required to appear for the examination. Certain documents at least called into question whether Heins was a necessary witness at the preliminary examination and whether he or Burns was supposed to appear for the hearing, and Dyer admittedly did not review those documents or speak to anyone else involved in the criminal case. However, insufficient

investigation is not evidence of reckless disregard for the truth or falsity of the statements. *Grebner, supra* at 333.

There being no evidence presented to the trial court to establish that Dyer or the News had knowledge that the published statements were false or that they entertained serious doubts about their truth, plaintiffs failed to show actual malice. Thus, the trial court erred in denying defendant's motion for summary disposition.

Reversed.

/s/ Patrick M. Meter

/s/ Kathleen Jansen

/s/ Roy D. Gotham